

FILED

JUL 12 2011

**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEFFREY LABOW,
10234 Arizona Circle
Bethesda, MD 20817

PLAINTIFF

VS.

DEPARTMENT OF JUSTICE,
950 Pennsylvania Ave., NW
Washington, DC 20530

DEFENDANT

Serve: Civil Process Clerk
United States Attorney's Office
District of Columbia
555 Fourth Street, NW
Washington, DC 20530

Serve: Eric Holder
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530

Judge _____
Civil Action No. _____

Case: 1:11-cv-01256
Assigned To : Kennedy, Henry H.
Assign. Date : 7/12/2011
Description: FOIA/Privacy Act

COMPLAINT

THE PARTIES

1. Plaintiff Jeffrey Labow is a citizen of Maryland residing at 10234 Arizona Circle, Bethesda, MD 20817.
2. Defendant Department of Justice (DOJ) is an agency of the United States.
3. The Federal Bureau of Investigation (FBI) is a component of the DOJ.

The FBI has possession, custody and control of the records Plaintiff seeks.

RECEIVED

JUN 30 2011

JURISDICTION AND VENUE

4. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552 and the Privacy Act of 1974 (“PA”), 5 USC § 552a.

5. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B) and 5 USC § 552a(g)(1)(B).

6. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B) and 5 USC § 552a(g)(5).

STATEMENT OF FACTS

7. In March 2011, Plaintiff sent a FOIA/PA request to the FBI via First Class mail requesting a copy of any records pertaining to him.

8. In a letter sent to Plaintiff dated April 14, 2011, the FBI acknowledged receipt of Plaintiff’s FOIA/PA request and assigned it tracking number 1164623-000.

9. On April 30, 2011, Plaintiff received a letter from the FBI indicating that no responsive records could be found.

10. Plaintiff filed an administrative appeal on May 18, 2011. On May 26, 2011, the DOJ’s Office of Information Policy (OIP) acknowledged receiving the administrative appeal and assigned it tracking number AP-2011-01912.

11. Pursuant to 5 USC § 552(a)(6)(A)(ii), a response to the appeal was due within 20 working days, or June 16, 2011.

12. Under 5 USC § 552(a)(6)(C)(i), Plaintiff is deemed to have exhausted his administrative remedies because Defendant has failed to comply with the statutory time limit.

13. Although the FBI claims to have found no responsive records, on information and belief it maintains a file and/or subfile on Plaintiff in its Central Records System (CRS).

14. The CRS contains an entry for an incident which occurred at the Four Seasons Hotel on April 12, 2008 in Washington, D.C. This file is numbered 415-HQ-C1477837-VQP or 266H-WF-238345. On information and belief, there is a subfile on Plaintiff under the main entry on the Four Seasons Hotel incident.

15. The investigation into the Four Seasons Hotel incident encompassed several subjects. The FBI created separate investigations whenever it identified a subject related to the Four Seasons Hotel incident. Documents that did not apply to the Four Seasons Hotel incident were placed in these separate investigative files.

16. The FBI identified Plaintiff as one of the subjects involved in the Four Seasons Hotel incident. On information and belief, a separate investigative file was therefore created for Plaintiff.

17. When the FBI maintains an ongoing investigation about an individual and that individual requests information about himself or herself under FOIA/PA and certain other conditions are met, the FBI has a policy or practice of informing the requester that there are no responsive records when the FBI in fact has responsive records. This policy or practice is explained in an Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act ("AG Memo"), available at <http://www.justice.gov/oip/86agmemo.htm>. The policy authorizes an agency to mislead the requester about the existence of responsive documents. AG Memo at 22, 24, 25 and 27. The AG Memo purports to derive its authority to mislead requesters in such situations from 5 USC § 552(c)(1). Notably, (c)(1) only applies when the subject is not aware of the pendency of the investigation.

18. Plaintiff, however, is aware of the pendency of an FBI investigation into his role in the Four Seasons Hotel incident and the separate investigative file on him which contains information unrelated to the Four Seasons Hotel incident. Plaintiff has seen the deposition transcript of Special Agent Angela Sercer in *Laura Sennett v. United States*, 1:10-cv-1055 (E.D. Va.) in which SA Sercer states that Mr. Labow is a “known extremist.” Plaintiff has also seen the portion of the transcript in *Sennett* in which an Assistant United States Attorney objected to counsel’s question about whether the FBI maintains a CRS file on Mr. Labow on the basis that the answer to that question would “tend to reveal that there is an ongoing investigation.” Another Assistant United States Attorney added that the witness could not answer the question on the basis of the “law enforcement privilege.” Because there would have been no basis for asserting a law enforcement privilege unless the FBI compiled records on Plaintiff, Plaintiff has reasonably deduced that the FBI maintains records about him.

19. Defendant should therefore be compelled to stop misleading Plaintiff as to the existence of his CRS main file and subfile and be ordered to disclose the requested records or assert appropriate exemptions.

COUNT I:
VIOLATION OF FOIA/PA

20. This Count realleges and incorporates by reference all of the preceding paragraphs.

21. Defendant has violated FOIA and PA by failing to produce records responsive to Plaintiff’s FOIA request.

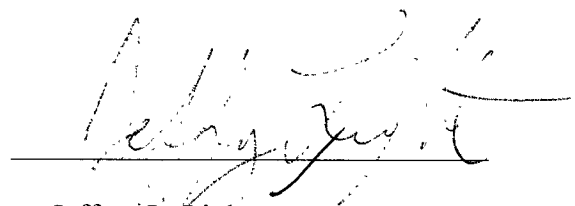
22. Plaintiff has been and will continue to be irreparably harmed until Defendant is ordered to comply with Plaintiff's FOIA/PA request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with FOIA and PA to be unlawful;
- (2) Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA/PA request and otherwise order Defendant to produce the requested records without further delay;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i) and 5 USC § 552a(g)(3)(B); and
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jeffrey L. Light", is written over a horizontal line.

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213

Counsel for Plaintiff